

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA)	3:04-cr-00100-LRH (RAM)
Plaintiff,)	
vs.)	<u>ORDER</u>
LINWOOD E. TRACY,)	
Defendant.)	

Before the court is Defendant's appeal from the denial by the Magistrate Judge of Defendant's Motion for an Early Termination of Probation (Doc. #85).

The court has reviewed the pleadings relevant to Defendant's motion and has reviewed the hearing before the Magistrate Judge. In this action, the Magistrate granted probation to the Defendant upon his underlying misdemeanor conviction and imposed a sentence of probation for eighteen (18) months. After approximately eight (8) months of supervision on probation, and the Defendant having complied with the terms of his probation through such period, he moved the court for an early termination from probation pursuant to Title 18, § 3564(c). A hearing was held before the Magistrate Judge, evidence was presented and the Magistrate Judge denied the motion with the following comments:

"... I think it's an important sentence to punish Mr. Tracy for what he did and also to send the word out to other people who dispute the authority of the IRS and whether or not there is a basis to collect income tax in this country that if they do in fact exercise those beliefs and commit that constitutes a crime that they are going to be punished and for that reason, I think terminating probation at this point in time would send the wrong message that you can go ahead and do this and as long as you live up to your terms of probation, which you are supposed to

1 do anyway, you can cut it in half, or less than half, and I don't think that that
2 serves the purpose in this case for what the sentence was meant to accomplish”

3 Pursuant to Title 18, § 3564(c), it is discretionary with the Magistrate Judge whether to
4 grant an early termination of probation. It would further appear that some justification and
5 reason in support of an early termination of probation should be tendered by the moving party,
6 which should be something stronger than successful compliance with the existing terms of
7 probation. No such evidence was tendered in this action and there was no evidence that would
8 demonstrate an abuse of discretion by the Magistrate Judge. It also appears that the Magistrate
9 Judge properly denied the motion for an early termination of probation.

10 GOOD CAUSE APPEARING, the Magistrate Judge's order (Doc. #89) denying
11 Defendant's Motion for an Early Termination of Probation is affirmed on appeal.

12 IT IS SO ORDERED.

13 DATED this 21st day of February, 2007.

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LARRY R. HICKS
17 UNITED STATES DISTRICT JUDGE
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